

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Sep 20, 2021**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANNE T.,

Plaintiff,

v.

KILOLO KIJAKAZI, Acting  
Commissioner of the Social Security  
Administration,

Defendant.

No: 1:20-CV-03080-FVS

ORDER DENYING PLAINTIFF'S  
MOTION TO ALTER OR AMEND  
JUDGMENT

BEFORE THE COURT is the Plaintiff's Motion to Alter Judgment pursuant to Federal Rule of Civil Procedure 59(e). ECF No. 27. For reasons discussed below, the Court denies Defendant's motion.

**BACKGROUND**

On June 3, 2020, Plaintiff filed a complaint pursuant to the Social Security Act, 42 U.S.C. §§ 405(g), challenging the Social Security Commissioner's final decision denying Plaintiff's application for Social Security Disability Insurance. ECF No. 1. Plaintiff's Motion for Summary Judgment was filed on February 5, 2021. ECF No. 19. Defendant's cross Motion for Summary Judgment was filed

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1 on March 5, 2021. ECF No. 22. Plaintiff filed a reply on April 5, 2021. ECF No.  
2 23. The Court entered an Order Denying Plaintiff's Motion for Summary  
3 Judgment and Granting Defendant's Motion for Summary Judgment and entered  
4 Judgment against Plaintiff on July 30, 2021. ECF Nos. 25, 26. Now, Plaintiff  
5 brings the instant motion to alter this Judgment pursuant to Fed. R. Civ. P. 59(e).  
6 ECF No. 27.

### 7 **LEGAL STANDARD**

8 Rule 59(e) allows a party to file a motion to alter or amend a judgment no  
9 later than 28 days after the entry of the judgment. The Ninth Circuit has held that  
10 reconsideration of a judgment is appropriate "if the district court (1) is presented  
11 with newly discovered evidence, (2) committed clear error or the initial decision  
12 was manifestly unjust, or (3) if there is an intervening change in controlling law."  
13 *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

### 14 **DISCUSSION**

15 Plaintiff argues that "[c]lear error occurred in the present decision concerning  
16 an improper assessment of harmless error, and the result was manifestly unjust," and  
17 requests this Court alter its Judgment to reverse and remand this case back to the  
18 Commissioner of Social Security for additional proceedings. ECF No. 27.

19 The Ninth Circuit has clearly set forth the standard of review in cases against  
20 the Commissioner of Social Security: A district court "will disturb the denial of  
21 benefits only if the decision 'contains legal error or is not supported by substantial

evidence.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008) *citing Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Orn*, 495 F.3d at 360 (quoting *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005)). The “evidence must be more than a mere scintilla but not necessarily a preponderance.” *Connett v. Barnhart*, 340 F.3d 871, 873 (9th Cir. 2003). The district court will uphold the ALJ’s conclusion even when the evidence is susceptible to more than one rational interpretation. *Burch*, 400 F.3d at 679. The Ninth Circuit has clearly stated that the district court “will not reverse an ALJ’s decision for harmless error, which exists when it is clear from the record that ‘the ALJ’s error was inconsequential to the ultimate non disability determination.’” *Tommasetti*, 533 F.3d at 1038 (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 885 (9th Cir. 2006); *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1055-56 (9th Cir. 2006)).

In this case, the Administrative Law Judge (ALJ) provided ten reasons to reject Plaintiff’s symptom statements. ECF No. 25 at 17-18. Plaintiff failed to challenge three of the ten reasons before this Court, resulting in a waiver of the issues. *Id.* at 21-22. Of the remaining seven reasons that the Court addressed, it found that four met the specific, clear and convincing standard required to reject Plaintiff’s symptom statements and were supported by substantial evidence. *Id.* at 16-21. The Court found that any resulting error from the three reasons that failed to

1 meet the specific, clear and convincing standard, or were not supported by  
2 substantial evidence, was harmless because the ALJ had provided legally sufficient  
3 reasons supported by substantial evidence to reject Plaintiff's symptom statements.  
4 *Id.* at 22-23. Likewise, the ALJ provided four reasons for rejecting Dr. Rue's  
5 opinion. *Id.* at 25-26. The Court found that one of those reasons met the specific  
6 and legitimate standard required to reject the opinion and was supported by  
7 substantial evidence. *Id.* at 27-30. Therefore, the Court found that any error  
8 resulting from the other three reasons that failed to meet the specific and legitimate  
9 standard, or were not supported by substantial evidence, was harmless because the  
10 ALJ had provided a legally sufficient reason supported by substantial evidence to  
11 reject the opinion. *Id.* at 30-31.

12 Plaintiff asserts that the Court applied the wrong harmless error standard and  
13 relies on the following Ninth Circuit holding in *Stout*:

14 we hold that where the ALJ's error lies in a failure to properly discuss  
15 competent lay testimony favorable to the claimant, a reviewing court  
16 cannot consider the error harmless unless it can confidently conclude  
that no reasonable ALJ, when fully crediting the testimony, could have  
reached a different disability determination.

17 454 F.3d at 1056. ECF No. 27 at 10. However, Plaintiff's reliance on this specific  
18 finding in *Stout* is misplaced. The Circuit Court's application of the harmless error  
19 rule in *Stout* was to evidence that had been improperly rejected. 454 F.3d at 1056.  
20 Therefore, the harmless error analysis required the district court to consider, if the  
21 testimony were credited as true, whether or not a reasonable ALJ would reach a

1 different decision. *Id.* In this case, the Court did not find that the evidence was  
2 improperly rejected. Instead, it found that the ALJ provided legally sufficient  
3 reasons supported by substantial evidence for rejecting Plaintiff's symptom  
4 statements and the opinion of Dr. Rue. Therefore, there is no requirement that the  
5 Court then credit the evidence as true and analyze whether or not a reasonable ALJ  
6 would have reached a difference decision.

7 The Circuit in *Stout* discusses a case similar to the present case at issue:

8 We recently applied harmless error where, unlike here, the ALJ  
9 expressly discredited testimony but erred in doing so. *See Batson v.*  
10 *Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195-97 (9th Cir. 2004).  
11 In *Batson*, the ALJ found the claimant's pain testimony incredible  
12 based, in part, on the claimant's statement that he watched over six  
13 hours of television per day. *Id.* at 1196-97. The ALJ reasoned that the  
14 claimant's ability to sit for that amount of time while watching  
15 television indicated he could sit for at least six hours of an eight-hour  
workday. *Id.* at 1197. Although the record did not confirm the  
claimant always sat during his television viewing, we concluded that  
any error the ALJ committed in assuming he did was harmless. *Id.* We  
did so because the ALJ provided numerous other record-supported  
reasons for discrediting the claimant's testimony, which allowed our  
review to determine the ALJ's error did not materially impact his  
decision. *Id.*

16 454 F.3d at 1054-55. In this case, like in *Batson*, the ALJ provided other legally  
17 sufficient reasons supported by substantial evidence for rejecting Plaintiff's  
18 symptom statements and Dr. Rue's opinion. Therefore, there is no clear error or  
19 manifest unjust result to justify altering the Court's Judgment under Fed. R. Civ. P.  
20 59(e).

1 Accordingly, **IT IS HEREBY ORDERED:** Plaintiff's Motion to Alter  
2 Judgment, **ECF No. 27**, is **DENIED**.

3 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this  
4 Order and provide copies to counsel.

5 **DATED** September 20, 2021.

6  
7 *s/ Rosanna Malouf Peterson*  
8 ROSANNA MALOUF PETERSON  
9 United States District Judge  
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